

MONTANA PUBLIC DEFENDER COMMISSION

CONFERENCE CALL

Public Location: Butte Central Office
44 W. Park, Butte MT 59701

May 17, 2016

MINUTES

(Approved at the June 20, 2016 Meeting)

Commissioners Present

Richard E. "Fritz" Gillespie, (Chair), Helena; Margaret Novak, Chester; Ann Sherwood, Pablo; Bonnie Olson, Marion; Roy Brown, Billings; Brian Gallik, Bozeman; Maylinn Smith, Missoula; Mark Parker, Billings

Commissioners Absent

Larry Mansch, Missoula; Mike Metzger, Billings; Terry Jessee, Billings

Staff Members Present

Bill Hooks, Chief Public Defender; Chad Wright, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Harry Freebourn, Administrative Director; Wendy Johnson, Contract Manager; Peter Ohman, Training Coordinator; Carleen Green, Accounting Supervisor; Mori Woods, Investigator Supervisor; Marsha Parr, Case Management Support; Chris Thomas, Eligibility Specialist; Lynn MacMillan, Contract Assistant; Cathy Doyle, Administrative Assistant

Interested Parties

Greg DeWitt, Legislative Fiscal Division; Amy Sassano, Malissa Williams, and Cynthia Hollimon, Office of Budget and Program Planning (OBPP)

1. Call to Order and Roll Call

Chairman Fritz Gillespie called the meeting of the Public Defender Commission to order at 1:05 p.m. The roll was called and a quorum was established. Chairman Gillespie announced that this would be Administrative Director Harry Freebourn's last meeting, and asked that a letter thanking Mr. Freebourn for his service be incorporated into the minutes (see Attachment A).

2. Approve Minutes (Action Item)

A. *February 26, 2016 Meeting*

B. *March 22, 2016 Meeting*

Commissioner Novak moved to approve the minutes of the February 26 and March 22, 2016 meetings as drafted. Commissioner Olson seconded and the motion carried.

3. Change to Application Form (Add Veteran Status) (Action Item)

Eligibility Specialist Chris Thomas proposed changing the client application form to add a check box regarding military status to enable reporting the number of veterans served. Other stakeholders have asked for this information, and it could be helpful to OPD's resource advocates. Commissioner Smith said it would also be helpful to gather information on the American Indian population OPD serves. She suggested including a space for the client's self-identified tribal affiliation.

Ms. Thomas would also like to modify the presumptive eligibility section by removing “SSDI” from the SSI/SSDI check box. People receiving SSDI fall under the income guidelines most of the time, but if they don’t the eligibility determination needs to be based on actual income by completing the full application.

This item will be tabled until the next meeting so that all changes can be made at once. The military status is just a data point, and not related to the eligibility determination. Any additional data points that might be collected can be discussed then.

4. Commission’s Discretionary Funds

A. Status Update

On December 11, 2015, the Commission approved funding for four items totaling \$335,000, based on estimated costs. The funding need based on revised information is actually \$290,700, leaving an unobligated fund balance of \$209,300 for the biennium.

B. Proposed Change to Use of Funds for Online Billing System (Action Item)

When the Commission approved \$100,000 for enhancements to the online billing system in December, they specifically allocated \$65,000 for software enhancements, and an additional \$35,000 for data analysis. Contract Manager Wendy Johnson provided a memo explaining her request to use the entire amount for software development; the data analysis can be done in-house, and the final scope of work has increased the anticipated costs for software development.

One of the procedures that Ms. Johnson plans to automate is the pre-approval process. Automation will help improve consistency and the ability to generate reports, as well as provide the ability to tie vendor payments to the approved amount, essentially creating a hard cap for those services. Conflict Coordinator Kristina Neal agreed these changes will improve efficiency.

Commissioner Olson moved to approve the change in the use of the funds and Commissioner Smith seconded. Chairman Gillespie invited public comment, but none was offered. The motion carried.

The Commission discussed possible uses for the remaining discretionary funds. There was a groundswell of support for the holistic defense model Commissioner Sherwood presented at the Task Force meeting yesterday. The Task Force plans to issue a request for proposals statewide, with the intent of funding four projects. Commissioners Sherwood and Smith are also working on a holistic defense project outside of OPD that will have its own funding. Commissioner Sherwood suggested requesting proposals from the regions for holistic defense or other pilot projects and funding those with discretionary funds. Chairman Gillespie noted that the purpose of the discretionary funds is to relieve stress on the system, and that any proposals must address pressure points. Chief Public Defender Bill Hooks expects that there would be a lot of competition just from Program 1 staff, and there wouldn’t be enough money to go around.

Mr. Freebourn said this is biennial funding, so it will carry over to next fiscal year. It could be used to fill current needs that otherwise won’t be addressed until the next biennium. Or, it could be used to mitigate the anticipated shortfall.

Commissioner Brown stated that using the funds for something new instead of mitigating the shortfall opens the agency up to criticism. Commissioner Novak agreed. There will be further discussion at the next meeting.

5. Update on Hiring Process for Chief Administrator

The Personnel Committee reviewed materials from 19 applicants who met the minimum requirements. They will conduct five phone interviews this week, and expect to choose three finalists from that group for interviews by the full Commission in June.

At yesterday's Task Force meeting, the agency restructure was discussed. Chairman Gillespie expects to see competing legislation developed, one draft supporting the co-equal model that the Commission adopted, and another with the executive director top-down model. The Task Force suggested that the Commission advise applicants that the agency structure may change.

A. Schedule Meeting to Conduct Finalist Interviews

The next meeting will be scheduled for mid-June.

6. Present Law Budget (Action Item)

Mr. Freebourn pointed out some details regarding the present law budget (see page 34 of the EPP document). Global issues for all programs include rising caseloads, primarily in the DN area. These cases are primarily responsible for the anticipated shortfall this biennium, which could be as high as \$3.5 million. He noted that turnover in Program 1 has increased again, probably due to workload. The case weighting system shows there are 57,600 excess attorney hours, which equates to 39 attorney FTE. Including investigator and administrative support of 5 and 12 FTE respectively, the total resource need is 56 FTE.

7. Prioritize Change Packages (Action Item)

The budget priority worksheet lists the change packages for each fiscal year. Budget Committee members independently ranked the 18 change packages. (Details for each change package are in the EPP document beginning on page 52.) Mr. Freebourn noted that these are just concepts; the Commission needs to identify the ones they want to advance to OBPP by the May 31 deadline.

Mr. Freebourn explained some of the change packages. Salary adjustments include the attorney career ladder and 22 positions that didn't get up to the 2014 market in FY 2016—3 IT staff and 19 investigators. All rent adjustments are included under Program 4 and allocated based on need.

The contingency case growth funding is a safety valve to avoid being in a supplemental situation. It would be triggered by excessive case growth (over 3.5%) and would require approvals before accessing funds. Multiple triggers could be identified, such as addressing DN caseload increases separately.

The Commission discussed the importance of various proposals including resource advocates, salary adjustments, and an increase to the contractor rate. Mr. Freebourn said that some hard decisions would have to be made if certain items aren't highly ranked, and suggested the following order:

1. Present law
2. Contract case increase (this represents the current biennium shortfall)
3. Rent adjustments
4. Future caseload growth
5. Salary adjustments
6. Chief Administrator support
7. Vision Net replacement
8. Resource advocates
9. Manager caseloads
10. Contractor rate adjustment

Commissioner Brown moved to set the first 10 priorities in this order. Commissioner Gallik seconded and the motion carried.

After further discussion the remaining items were prioritized as follows:

11. Contingency case growth funding
12. Address excess case weighting
13. Equipment replacement
14. Furniture replacement
15. Eligibility specialists
16. Time and workload study
17. Vacancy savings
18. Commission new positions
19. Death penalty defense

Commissioner Novak moved to adopt priorities 11-19 as listed. Commissioner Sherwood seconded and the motion carried.

8. Public Comment

No public comment was offered.

9. Old Business/New Business

A. Change to Application Form (Action Item)

This item was tabled.

B. Change to Use of Discretionary Funds (Action Item)

Ms. Johnson's online billing system proposal was approved under Item 4.B. The discussion of how to use the remaining funds was deferred until after the budget conversation. Mr. Freebourn said the discretionary funds could be used to provide contract assistance or relieve other pressure points now instead of a year from July. Ms. Johnson will prepare a proposal on how an additional position could be created to help meet statutory requirements regarding proficiency determinations.

Commissioner Olson asked the program managers if there are other pressure points that should be discussed. Chief Hooks doesn't have anything exceptional; there is a constant need, but none are priorities. Chief Appellate Defender Chad Wright and Training Coordinator Peter Ohman don't have any requests. Ms. Neal will put together a proposal to relieve some of her stresses, especially in regard to mentoring and management duties in outlying areas.

C. Approve Present Law Budget (Action Item)

This item was approved under Item 7.

D. Prioritize Change Packages (Action Item)

This item was approved under Item 7.

The next meeting will be held in Butte so the Chief Administrator candidates can see the Central Services facility. Once the finalists are selected, Lisa Coligan from State Human Resources will coordinate dates with the candidates and the meeting will be scheduled for mid-June.

10. Adjourn

The meeting adjourned at 3:50 p.m.